

DEC 28 2007

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

SUE ELLEN STATEN,

Defendant - Appellant.

No. 07-30040

D.C. No. CR-04-00039-SEH

MEMORANDUM *

Appeal from the United States District Court
for the District of Montana
Sam E. Haddon, District Judge, Presiding

Submitted December 3, 2007**

Before: GOODWIN, WALLACE and FISHER, Circuit Judges.

Sue Ellen Staten appeals from the 63-month sentence imposed upon remand,
following her guilty-plea conviction for conspiracy to manufacture

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

methamphetamine, in violation of 21 U.S.C. § 846. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Staten contends that the district court erred by applying U.S.S.G. § 2D1.1(b)(5)(B) to enhance her sentence because the evidence did not support the conclusion that the underlying offense created a substantial risk of harm. We disagree. The evidence presented at sentencing supported the district court's conclusion that there was a substantial risk of harm posed by the conspiracy. *See* U.S.S.G. § 2D1.1(b)(5)(B) & cmt. n.20(A).

AFFIRMED.